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HAROLD B. WILLEY, C

IN THE

Supreme Court of the United States

October Term, 1955.

No. 628

HOUSING AUTHORITY OF THE CITY OF LOS ANGELES, CALIFORNIA, a public body corporate and politic,

Petitioner,

vs.

JIM C. CORDOVA, RAMONA CORDOVA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI.

To the Appellant Department of the Superior Court of the State of California, in and for the County of Los Angeles.

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SUBJECT INDEX

PAGE

Opinions below 1

Jurisdictional statement 2

Questions presented 8

Constitutional provisions and statutes involved..... 8

Statement of the case..... 12

Reasons for granting writ..... 17

Conclusion 19

Appendices:

Appendix A. Opinion of trial court.....App. p. 1

Appendix B. Opinion of Superior Court (Oct. 21, 1955)....
.....App. p. 3

Appendix C. Opinion of Superior Court (Jan. 19, 1955)....
.....App. p. 5

TABLE OF AUTHORITIES CITED

CASES	PAGE
Adler v. Bd. of Education, 342 U. S. 485	18
American Communications Assn. v. Douds, 339 U. S. 382	18
Anti-Fascist Refugee Com. v. McGrath, 341 U. S. 123	16
Berkeley Guarantee Bldg. & Loan Ass'n v. Cunningham, 218 Cal. 714, 24 P. 2d 782	3
Dennis v. United States, 341 U. S. 494	19
Edwards v. California, 314 U. S. 160	3
Frost v. Railroad Com. of California, 271 U. S. 583	16
Garner v. Board of Education, 341 U. S. 716	16, 19
Hamilton v. University of California, 293 U. S. 245	18
Irving Trust Co. v. Day, 314 U. S. 556	3
Lawson v. Housing Authority of the City of Milwaukee, ... U. S. ....., Oct. Term 1955, No. 354	17
Maryland v. Baltimore Radio Show, Inc., 338 U. S. 911	18
McLean v. Freiberger, 215 Cal. 1, 7 P. 2d 1023	3
Oklahoma v. United States Civil Service Commission, 330 U. S. 127	19
Pacific Gas & Electric Co. v. Police Court of Sacramento, 251 U. S. 22	3
Richfield Oil Corporation v. State Bd. of Eq., 329 U. S. 69	3
Riley v. New York Trust Co., 315 U. S. 343	3, 5
Sargent v. Texas, 318 U. S. 418	3
Turner v. Williams, 194 U. S. 279	19
United Public Workers v. Mitchell, 330 U. S. 75	18
United States v. Teller, 107 U. S. 64	19
Walton v. People of the State of California, 348 U. S. 894	3
Waugh v. Mississippi University, 237 U. S. 589	18
Whitney v. California, 274 U. S. 356	3
Wieman v. Updegraff, 344 U. S. 183	19

STATUTES PAGE

Gwinn Amendment (42 U. S. C. 1411c) 9, 12

Health and Safety Code of the State of California:

Sec. 34322 ..... 10, 16

Sec. 34323 ..... 11, 16

Sec. 34327 ..... 11, 12, 13, 14, 16

Independent Offices Appropriation Act (Ch. 578, Public Law 455, Act of July 5, 1952, Title I, Sec. 101, 66 Stat. 403) 9

United States Code, Title 28, Sec. 1257(3) 3

United States Code, Title 42, Secs. 1401 to 1435 12

UNITED STATES CONSTITUTION

First Amendment 3, 5, 6, 8, 14, 15, 16

Fifth Amendment 3, 5, 6, 8, 14, 15, 16

Fourteenth Amendment 3, 5, 6, 8, 14, 15, 16

CALIFORNIA CONSTITUTION

Article VI, Sec. 5 3

IN THE

Supreme Court of the United States

October Term, 1955.

No. .....

HOUSING AUTHORITY OF THE CITY OF LOS ANGELES, CALIFORNIA, a public body corporate and politic,

Petitioner,

vs.

JIM C. CORDOVA, RAMONA CORDOVA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI.

To the Appellant Department of the Superior Court of the State of California, in and for the County of Los Angeles.

The Housing Authority of the City of Los Angeles, Petitioner, prays that a writ of certiorari issue to review the judgment of the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, which was entered on October 21, 1955 [R. .....] and which affirmed the judgment of the Municipal Court, Los Angeles Judicial District, County of Los Angeles, State of California, entered July 18, 1955 [R. .....].

Opinions Below.

The opinions of the Municipal Court, Los Angeles Judicial District, County of Los Angeles, State of California (hereinafter called "Trial Court"), are not reported (see Appendix A). The memorandum opinion of the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles [R. .....], is not reported (see Appendix B).

The memorandum opinion (Appendix B) merely adopted, by reference, a previous opinion of said Appellate Department which had been issued on January 19, 1955, and which is reported at 130 Cal. App. 2d 883, 279 P. 2d 215. The latter opinion (Appendix C), which had been issued upon an appeal taken from a judgment entered after Motion for Summary Judgment had been granted, sent this case back to the Trial Court for trial.

As a practical matter, it is the opinion of January 19, 1955, which is presented for consideration by this Petition and therefore it is included in the Appendix hereto as a matter of covenience.

Jurisdictional Statement.

The judgment of the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles (hereinafter called "Superior Court") and affirming the judgment of the Trial Court was entered on October 21, 1955 [R. .....].

Decisions by such Superior Courts—*upon appeal from Municipal Courts*—are decisions of a "Court of Last

Resort" and "by the highest Court in which decision could be had" in the State of California.

Sargent v. Texas, 318 U. S. 418;

Berkeley Guarantee Bldg. & Loan Ass'n v. Cunningham, 218 Cal. 714, 24 P. 2d 782;

McLean v. Freiberger, 215 Cal. 1, 7 P. 2d 1023;

Edwards v. California, 314 U. S. 160;

Walton v. People of the State of California, 348 U. S. 894;

Pacific Gas & Electric Co. v. Police Court of Sacramento, 251 U. S. 22, 24;

California Constitution, Art. VI, Sec. 5.

The jurisdiction of this Court is invoked under 28 U. S. C. 1257(3) on the ground that a right is specially set up and claimed under the Constitution of the United States, First, Fifth and Fourteenth Amendments. The cases relied upon to sustain the jurisdiction of this Court are:

Richfield Oil Corporation v. State Bd. of Eq., 329 U. S. 69;

Riley v. New York Trust Co., 315 U. S. 343;

Edwards v. California, 314 U. S. 60;

Irving Trust Co. v. Day, 314 U. S. 556;

Whitney v. California, 274 U. S. 356.

Petitioner commenced an action, against Respondents,[1] in the Trial Court, for unlawful detainer, and alleged:

(a) That Respondents were tenants in a unit of a housing development operated by Petitioner;

(b) That Respondents held a month-to-month tenancy under a written lease;

(c) That pursuant to said lease Petitioner had given Respondents a ten (10) days' written notice of termination.

(d) That Respondents refused to surrender the premises and unlawfully continue in possession of the same [R. .....].

Respondents filed an answer [R. .....] and, while generally admitting the allegations of the complaint, denied that their tenancy had been *lawfully* terminated and alleged that the "only reason" the notice of termination issued was that they refused to sign a certificate (sometimes herein referred to as "Gwinn Amendment Certificate") that they were not members of any one of a number of organizations described as those "designated by the Attorney General of the United States as within Executive Order No. 10450 (18 F. R. 2489). Respondents also alleged that attempted eviction, for that reason, was in violation of their constitutional rights under the

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[1]Originally five (5) different suits were commenced against five (5) different families, but, by stipulation of Petitioner and Respondents (and the other tenants), by and through their respective attorneys only the present Respondents are involved in this Petition. All parties concerned have agreed that the final judgment in this proceeding will be binding on all parties (five (5) families and Petitioner).

It is noted that all five (5) cases are identical except as to name and amount of rent involved.

First, Fifth and Fourteenth Amendments to the Constitution of the United States [R. .....].

Respondents also alleged that the "Gwinn Amendment" was a Bill of Attainder in violation of Article 1, Section 10, Clase 1 of the Constitution of the United States [R. .....].

Riley v. New York Trust Co., 315 U. S. 343.

Petitioner moved for a Summary Judgment and it was granted on the theory that, *under California law,* the reason for tenancy termination was irrelevant *and no constitutional issue was presented.* After judgment, Respondents appealed to the said Superior Court and thereafter and on January 19, 1955, that Court *reversed* the Trial Court *on the ground that the constitutional issues* were relevant and the case should be referred back to the Trial Court for a trial on the factual issues (Appendix C).

When the case came back to the Trial Court, Petitioner and Respondents stipulated to the facts [R. .....] and, among other matters, stipulated that:

> "The sole and only motivation for the service of said Notices of Termination * * * was and is that the defendants * * * refused, upon demand of plaintiff, to sign * * * (*i.e.,* a Gwinn Amendment Certificate). Without such motivation the notices in question would not have been served." [R. .....]

Thereafter the Trial Court entered its judgment, for Respondents, on July 18, 1955 (Appendix A), and, on October 21, 1955, the Superior Court entered its affirming judgment (Appendix B) adopting its opinion of

January 19, 1955, which is reported at 130 Cal. App. 2d 883, 279 P. 2d 215 (Appendix C).

Therefore, a "court of last resort," the "highest Court of the State in which decision could be had," has entered a judgment for Respondent and based the same on the ground that, as contended for by Respondents, an eviction of a tenant in a city housing development—motivated solely by the tenant's refusal to sign a "Gwinn Amendment" certificate—is unlawful as being violative of the tenant's rights under the First, Fifth and Fourteenth Amendments of the Constitution of the United States.

The "Court of Last Resort" in California has held that a local Housing Authority cannot evict one of its tenants solely because he refuses to sign a Gwinn Amendment Certificate. Further, that such eviction would be unlawful because it would violate the above-designated provisions of the Constitution of the United States.

Petitioner did not file a Petition for Rehearing in the Superior Court, because it is believed that no new facts or legal arguments could be presented in addition to those presented in the two (2) appeals presented to that Court.

Inasmuch as all local Housing Authorities throughout the United States (with the probable exception of the City of Milwaukee Authority)—as well as Petitioner—are proceeding on the theory that no constitutional rights are violated when evictions are attempted—because of such refusal to sign the certificate—this judgment, of the Superior Court, presents very substantial federal questions which should, Petitioner respectfully submits, be answered by this Court for the guidance of Petitioner and all other Housing Authorities.

The right of Local Housing Authorities to enforce the Gwinn Amendment has been attacked in a number of cases filed in various courts throughout the States of California, Colorado, Illinois, Maryland, New Jersey, New York, Washington, Wisconsin and the District of Columbia.

In the cases that have been decided, there has been, of course, no unanimity of decision and little consistency in the application of legal principles to the questions involved. The law has been held constitutional in some jurisdictions, unconstitutional in other jurisdictions, and in still other jurisdictions the courts have decided the issues on procedural grounds without reaching the constitutional question. The uncertainty of the law has reduced the enforcement of the Gwinn Amendment to such a state of confusion as to amount almost to a condition of chaos.

The enforcement of the Gwinn Amendment affects the right of tenants of public low-rent housing projects throughout the United States and its possessions. Approximately one million citizens are concerned today and the number is constantly increasing. The projects involved in this litigation have more than 7,150 tenants, with a normal turnover in such tenancy of 215 a month. Taking into consideration the normal ratio of change in the tenancy of public low-rent housing projects, we believe it is reasonable to assume that this problem will not only continue, but will increase to such an extent that the whole problem of enforcement of the Gwinn Amendment will become more and more difficult and confusing.

Questions Presented.

FIRST: May the Congress of the United States adopt a statute which requires Local Housing Authorities to evict any of its tenants who refuse to sign a certificate stating that they are not members of any one of a number of organizations designated as subversive by the Attorney General of the United States?

SECOND: May a State Legislature adopt a law authorizing a Local Housing Authority, operating its low-cost housing development developed under the United States Housing Act of 1947, as amended (with financial assistance by way of loans and annual contributions from the United States [acting by and through the Public Housing Administration]), to evict a tenant on the ground that he refuses to sign a "Gwinn Amendment Certificate," which is effectively required by an Act of Congress?

THIRD: May a tenant, of such Housing Authority, avoid eviction (because he refuses to sign a Gwinn Amendment Certificate), on the theory that such an eviction would violate his rights under the First, Fifth and Fourteenth Amendments of the Constitution of the United States?

Constitutional Provisions and Statutes Involved.

The following provisions of the Constitution of the United States are involved in this case:

FIRST AMENDMENT:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

FIFTH AMENDMENT:

"No person shall * * * be deprived of life, liberty or property, without due process of law; * * *."

FOURTEENTH AMENDMENT, Section 1:

"* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The federal statutes involved in this case are:

42 U. S. C., Section 1411c:

"Subversives barred from occupancy of housing units; enforcement; prohibition as affecting Public Housing Administration.

"No housing unit constructed under this chapter, shall be occupied by a person who is a member of an organization designated as subversive by the Attorney General: Provided further, That the foregoing prohibition shall be enforced by the local housing authority, and that such prohibition shall not impair or affect the powers or obligations of the Public Housing Administration with respect to the making of loans and annual contributions under this chapter. July 5, 1952, c. 578, Title I, Sec. 101, 66 Stat. 403; July 31, 1953, c. 302, Title I, Sec. 101, 67 Stat. 307."

The above statute, which is popularly known as the "Gwinn Amendment," was originally enacted as part of Title I of the Independent Offices Appropriation Act, 1953 (Chapter 578, Public Law 455, Act of July 5, 1952, Title I, Section 101, 66 Stat. 403) in that portion thereof

relating to Public Housing Administration, Housing and Home Finance Agency. Such provision was not repeated in the Independent Offices Appropriation Act, 1955, Act of June 24, 1954, Chapter 359, 68 Stats. 272.

While the entire Health and Safety Code of the State of California is the legislative source of Petitioner's creation and of its authority and operating rights, it is believed that the following specific sections thereof are the only sections material to this proceeding:

Section 34322 thereof reads as follows:

"Tenant selection: Number of rooms. The operation or management of housing projects by a housing authority shall:

(a) Rent or lease the dwelling accommodations only to persons of low income and only at rentals within their financial reach.

(b) Rent or lease to a tenant dwelling accommodations consisting of the number of rooms which it deems necessary to provide safe and sanitary accommodations to the occupants, without overcrowding.

(c) Reject any person as a tenant in any housing project if he has an annual net income in excess of five times the annual rental of the quarters to be furnished, except that in the case of families with three or more minor dependents, the ratio shall not exceed six to one. In computing the rental for this purpose, there shall be included in the rental the average annual cost, as determined by the authority, to occupants of heat, water, electricity, gas, cooking range, and other necessary services or facilities, whether or not the charge for them is included in the rental.

(d) Prohibit subletting by tenants."

Section 34323 thereof reads as follows:

"Remedies of authority's obligee: Effect of Section 34321 and 34322. Nothing contained in Section 34321 and 34322 shall be construed as limiting the power of an authority to vest in an obligee the right, in the event of a default by the authority, to take possession of a housing project, cause the appointment of a receiver for it, or acquire title to it through foreclosure proceedings, free from all the restrictions imposed by such sections."

Section 34327 thereof reads as follows:

"Federal aid. An authority may:

(a) Borrow money or accept grants or other financial assistance from the Federal Government for or in aid of any housing project within its area of operation.

(b) Take over, lease, or manage any housing project or undertaking constructed or owned by the Federal Government.

(c) For these purposes, comply with such conditions and enter into any mortgages, trust indentures, leases, or agreements necessary, convenient, or desirable.

It is the purpose and intent of this chapter to authorize every authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the Federal Government in the undertaking, construction, maintenance, or operation of any housing project by an authority." (Emphasis added.)

Statement of the Case.

I. Procedural History of the Case.

Respondents were and are tenants of a unit in a federally aided low-rent project (Aliso Village) which was and is operated by the Housing Authority of the City of Los Angeles—Petitioner herein. Such project was constructed with federal assistance under the Housing Act of 1937, as amended (42 U. S. C. 1401-1435).

The Petitioner is a public body corporate and politic existing under and by virtue of Sections 34200 to 34368 of the Health and Safety Code of the State of California.

The Petitioner operates pursuant to such Code and in accordance with certain by-laws, regulations and resolutions adopted by its Commissioners (who are appointed by the Mayor of the City of Los Angeles).

After the adoption of the Gwinn Amendment (42 U. S. C. 1411c) by the Congress (in 1953—as a proviso of the Independent Offices Appropriation Act of 1953), the Public Housing Administration (hereinafter called "PHA") urged all local Housing Authorities—including Petitioner—to require all tenants in such projects to sign a "Gwinn Amendment Certificate" in order that such authorities would, as required, enforce such Amendment.

On December 16, 1952, Petitioner adopted Resolution No. 2037 (which was Exhibit D in the Stipulation of Facts in the Trial Court)—purporting to act under California Health and Safety Code—Section 34327 [R. .....].

Acting pursuant to said Resolution 2037, Respondents were requested, in January or February, 1953, to sign

a "Gwinn Amendment Certificate" (attached to the Stipulation of Facts in the Trial Court as Exhibit H) [R. .....].

Thereafter, and on January 26, 1954, Petitioner adopted (pursuant to Section 34327 of the Health and Safety Code of the State of California) Resolution No. 2198 [Ex. J of Trial Court Stipulation of Facts, R. .....]. *On February 24, 1954, Respondents were again requested to sign such a certificate* [Ex. "C" of Trial Court Stipulation of Facts, R.....] *or be evicted.*

That, on March 17, 1954, Petitioners served Respondents with a Notice to Terminate (their lease) because of Respondents' failure to sign the certificate in question [R.....]. On April 2, 1954, Petitioners filed a Complaint—Unlawful Detainer—against Respondents to evict them from the unit they were occupying [R.....].

Respondents, on April 15, 1954, filed their Answer [R.....] relying on the Federal Constitutional grounds hereinbefore mentioned.

Petitioners filed a Motion for Summary Judgment on the theory no defense had been presented by Respondents' Answer. The Trial Court, on June 4, 1954, granted the Motion on the ground "the record shows no triable issue" [R.....].

Respondents appealed to the Superior Court and on January 19, 1955, that Court entered its judgment and opinion *reversing* the Trial Court (Appendix C).

On remittitur to the Trial Court, Petitioner and Respondents stipulated to the facts [R.....], and there-

after, and on July 18, 1955, the Trial Court rendered its opinion and judgment *in favor of Respondents* (Appendix A).

Thereafter, Petitioner appealed to Superior Court *and on October 21, 1955,* that Court affirmed the judgment of the Trial Court (Appendix B).

Petitioner has no further remedy for appellate review in the courts of the State of California.

II. Facts Material to the Questions Presented.

All material facts were stipulated to by Petitioner and Respondent [R.....] or are presented by allegations in the Complaint [R.....] which are admitted by Respondents' Answer [R.....].

Briefly, they may be summarized as follows:

Petitioners, *after amendment to its administration contract with PHA,* and as required by the Gwinn Amendment, proceeded, *pursuant to Section 34327 of the Health and Safety Code of the State of California,* to request Respondents to sign a Gwinn Amendment Certificate. Respondents refused—relying upon the First, Fifth and Fourteenth Amendments to the Constitution of the United States.

Petitioner commenced eviction proceedings by filing an Unlawful Detainer Complaint and Respondents answered alleging, among other matters, that an eviction—for mere refusal to sign such a certificate—would be violative of their constitutional rights under the First, Fifth and Fourteenth Amendments to the Constitution of the United States.

III. Federal Questions Raised in the State Courts.

(a) In the Trial Court.

The "affirmative defense" set up in Respondents' Answer to Petitioner's Unlawful Detainer Complaint specifically claimed and set up a right under the First, Fifth and Fourteenth Amendments to the Constitution of the United States [R.....].

This defense was argued and briefed in the Trial Court—but that Court ruled that the issue was not relevant because Petitioner could evict, *regardless of its reason for such eviction.*

After reversal by the Superior Court (See Appendix C) the Trial Court, on July 18, 1955, did enter judgment for Respondents on the theory that Petitioner couldn't require Respondents to sign such certificate as a condition of occupancy (Appendix A).

(b) In the Superior Court.

There were two (2) issues argued and briefed in the Superior Court—to wit:

(1) Petitioner, like a *private* landlord, could evict for any or no reason;

(2) If the First, Fifth and Fourteenth Amendments to the Constitution of the United States were involved in such eviction—then Petitioner violated no right, granted to Respondents thereby, by evicting Respondents because they refused to sign a Gwinn Amendment Certificate.

An analysis of the Superior Court's Opinion of January 19, 1955 (Appendix C), will disclose that the Court was of the opinion that:

(1) Petitioner could not act arbitrarily and irrespective of Respondents' Constitutional rights; and

(2) To evict solely because of refusal to sign the certificate in question would be an arbitrary action in violation of certain alleged Constitutional rights of Respondents (citing *Garner v. Board of Education,* 341 U. S. 716; *Anti-Fascist Refugee Com. v. McGrath,* 341 U. S. 123; *Frost v. R. R. Com. of Calif.,* 271 U. S. 583) under the First, Fifth and Fourteenth Amendments.

While the Court does not quote or refer to these specific Federal Constitutional provisions, the reasoning of the Court makes it clear (when considered with pleadings and briefs presented to it) that these are the constitutional provisions which it must be referring to in holding the eviction in question to be arbitrary and unlawful—and as being bottomed on an unconstitutional requirement.

Petitioner recognizes that the second ground of the Superior Court's opinion raises no federal question—*i. e.,* eviction not justified by the provisions of Sections 34322. 34323 and 34327 of the Health and Safety Code of the State of California.

However, this entire point *is premised* on the argument that such an eviction *would violate* the constitutional provisions and *therefore* these California Code Sections should be construed so as to sustain their validity.

This point, of course, begs the constitutional questions —which should be answered by this Court.

Therefore, Petitioner does not believe that the judgment of the Superior Court can be said to be based on an adequate non-federal or state issue.

Reasons for Granting Writ.

Petitioner believes and respectfully submits that the State Court has decided a federal question of substance not heretofore determined by this Court, and, further, that such decision is probably not in accord with applicable decisions of this Court.

1. While this Petition was being prepared, this Court denied certiorari, on November 7, 1955, in the case entitled *Lawson v. Housing Authority of the City of Milwaukee, et al.,* October Terms, 1955, No. 354.

However, Petitioner believes that local Housing Authorities, including Petitioner, must *adhere to their administration contracts with PHA and the Gwinn Amendment* by requiring that tenants sign the certificates in question.

Unless this federal question is disposed of by this Court (and by a decision on the merits thereof) local Housing Authorities throughout the United States (other than those operating in the State of Wisconsin) will be forced to file a multitude of individual and separate Petitions for Writ of Certiorari with this Court.

2. Petitioner believes that mere "denial of the Petition"—*without an opinion*—does not necessarily mean that this Court has, within the purview of Rule 19(a) of this Court, decided the federal question of substance pre-

sented by this Petition. The denial could be based upon some procedural defect or some other nonsubstantive reason.

Maryland v. Baltimore Radio Show, Inc., 338 U. S. 911.

3. The federal question of substance is:

Whether Congress can require or a State Legislature can authorize a local Housing Authority to compel its tenants—*as a condition of occupancy* of a housing unit constructed, maintained and operated with federal aid given pursuant to the Housing Act of 1947, as amended—to sign the certificates in question.

As of this date Petitioner, the PHA and all local Housing Authorities (other than Housing Authorities of the State of Wisconsin) have no decision of this Court to definitely and specifically guide them.

This substantial question should, Petitioner respectfully submits, be specifically and definitely answered by this Court.

4. Petitioner believes that the decision of the State Court is probably not in accord with the following decisions of this Court:

American Communications Assn. v. Douds, 339 U. S. 382;

Adler v. Bd. of Education, 342 U. S. 485;

United Public Workers v. Mitchell, 330 U. S. 75;

Hamilton v. University of California, 293 U. S. 245, 262;

Waugh v. Mississippi University, 237 U. S. 589, 596-597;

Garner v Bd. of Public Works of L. A., 341 U. S. 716;

Oklahoma v. U. S. Civil Service Commission, 330 U. S. 127;

Wieman v. Updegraff, 344 U. S. 183;

Dennis v. United States, 341 U. S. 494;

United States v. Teller, 107 U. S. 64, 68;

Turner v. Williams, 194 U. S. 279.

Conclusion.

Therefore, Petitioner respectfully requests that a Writ of Certiorari issue to the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles.

JAMES J. ARDITTO,

Attorney for Petitioner.

Appendix "A."

In the Municipal Court, Los Angeles Judicial District, County of Los Angeles, State of California.

Housing Authority of the City of Los Angeles, California, a public body, corporate and politic, Plaintiff, vs. Jim C. Cordova, Ramona Cordova, Defendants. No. 171,371.

Housing Authority of the City of Los Angeles, California, a public body, corporate and politic, Plaintiffs, vs. Eleanor Wycoff, Defendant. No. 171,374.

Housing Authority of the City of Los Angeles, California, a public body, corporate and politic, Plaintiff, vs. Sidney S. Moore, Jr., Adele Moore, Defendants. No. 173,307.

MEMORANDUM OF OPINION.

The above matters, consolidated for trial, were this day submitted for decision upon written Stipulation of Facts filed herein.

Paragraph 6 of the Stipulation reads as follows:

"The sole and only motivation for the service of said Notices of Termination upon the defendants hereinabove referred to, was and is that the defendants and each of them have refused, upon demand of the plaintiff, to sign a 'Certificate of Non-Membership in Subversive Organizations', a copy of which said certificate is attached hereto as Exhibit 'C'. Without such motivation the notices in question would not have been served."

When these cases were before the Appellate Department of the Superior Court of this County for decision on January 19, 1955, (*Housing Authority v. Cordova,*

130 A. C. A. Supp. 478), the Appellate Department held (p. 482) "that the plaintiff Housing Authority is without authority to exact the signing of the nonmembership certificate as a condition to the right to occupy its premises." This determination by the Appellate Department is conclusive upon this court and is determinative of the only issue in this case. Therefore, judgment must be and is rendered in favor of the defendants in all of these cases.

Dated: This 18th day of July, 1955.

VERNON W. HUNT, *Judge.*

Appendix "B."

In the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles.

Housing Authority of the City of Los Angeles, California, etc., Plaintiff and Appellant, vs. Jim C. Cordova, *et al.*, Defendants and Respondents. Superior Court No. Civ. A 8851. Trial Court No. 171,371.

On Appeal from the Municipal Court of the Los Angeles Judicial District, County of Los Angeles, State of California. Vernon W. Hunt, Judge.

This cause having been argued and submitted and fully considered, judgment is ordered as follows:

It is Ordered and Adjudged that the judgment made and entered in the Municipal Court of the Los Angeles Judicial District, County of Los Angeles, State of California, in the above entitled cause be and the same is hereby affirmed, respondents to recover their costs of appeal.

MEMO.

See previous opinion herein. (*Housing Authority v. Cordova* (1955), 130 Cal. App. 2d (Supp.) 883.)

Oct 21, 1955.

By the Court.

SHAW,
Presiding Judge.

PATROSSO,
Judge.

SWAIN,
Judge.

I, Harold J. Ostly, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, do hereby certify that the foregoing is a true copy of the.....original judgment entered by said Court in the above entitled cause on the .....day of....., 19....., and now remaining of record in this Court.

Witness my hand and seal of the Court, affixed this .....day of ....., 19.....

HAROLD J. OSTLY, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles.

By.....Deputy.

Appendix "C."

In the Appellate Department of the Superior Court, County of Los Angeles, State of California.

Housing Authority of the City of Los Angeles, California, etc., Plaintiff and Respondent, vs. Jim C. Cordova, *et al.,* Defendants and Appellants. Superior Court No. Civ. A 8550. Trial Court No. 171,371.

Memorandum Opinion.

Appeal by defendants from a judgment of the Municipal Court of the Los Angeles Judicial District, Lucius P. Green, Judge. Reversed.

For Appellants—Wirin, Rissman & Okrand.

For Respondent—James J. Arditto, Esq.

This case and three companion cases [Civ. A 8551, 8552 and 8553] present the same questions and this opinion is equally applicable to each.

The complaint is in the usual form of an action in unlawful detainer, alleging that defendants are the tenants of a unit in a housing development operated by the plaintiff under a month to month tenancy evidenced by a written agreement providing that it may be terminated by either party upon ten days' written notice to the other; and that plaintiff elected to so terminate defendants' tenancy by giving the requisite notice, but that defendants have refused to surrender possession thereof and unlawfully continue to occupy the same. Defendants answered, admitting generally the allegations of the complaint except that they denied that their tenancy had been lawfully terminated, and alleging that such purported termination was unlawful and unauthorized in that the only

reason therefor was defendants' refusal to sign a certificate that they were not members of any one of a list of numerous organizations described as those "designated by the Attorney General of the United States as within Executive Order No. 10450 (18 F. R. 2489)," and that eviction from the premises for the reason stated was in violation of their constitutional rights. Plaintiff thereupon moved the court for summary judgment upon the ground that the facts alleged did not constitute a defense. The motion was granted, and defendants appeal from the resulting judgment.

In support of the judgment plaintiff contends that the reason for its action in terminating defendants' tenancy is immaterial, the argument being that it, like a private proprietor may terminate a monthly tenancy by giving the requisite notice with or without cause, and that the reason underlying its action in so doing may not be inquired into in a proceeding seeking to recover possession of the premises following such termination. Defendants reply that plaintiff, as a public body, does not occupy the same status as a private proprietor, and that it may not terminate their tenancy if its action in so doing is arbitrary or in violation of their constitutional rights, as they allege to be the situation here. Plaintiff replies that, assuming its action in terminating defendants' tenancy was for the reason stated, it is not arbitrary nor is it violative of any of defendants' constitutional rights.

In the present posture of the case, it must be taken as true that the sole and only reason for the termination of defendants' tenancy is the fact that they refused to execute the certificate previously referred to; and hence the question presented is whether, if this fact be established

upon the trial, such proof would constitute a good defense to the action.

Plaintiff's argument that it may terminate the tenancy of those occupying its public housing projects with or without reason may readily be disposed of. We believe it fairly obvious that a public body, a housing authority as here, does not possess the same freedom of action as a private landlord, who is at liberty to select his tenants as he pleases, and in the absence of a letting for a prescribed term, may terminate their tenancy either without any reason or for any reason regardless how arbitrary or unreasonable it may be. Thus he may refuse either to rent to or permit the continued occupancy of his premises by persons of a particular race or religion or political affiliation. A housing authority, however, has no such freedom of action. (See Banks v. Housing Authority (1953), 120 Cal. App. 2d 1, 8, *et seq.*) And if it may not discriminate arbitrarily between persons and classes in leasing its premises, we see no reason why like considerations do not preclude arbitrary discrimination as between existing tenants in their right to continue such occupancy. (See Chicago Housing Auth. v. Blackman, (Supreme Court Ill., Nov. 8, 1954), 122 N. E. 2d 522.)

We pass, therefore, to the vital question as to whether plaintiff's action in undertaking to terminate defendants' right to continue the occpancy of the premises for the sole reason that they refused to execute the certificate previously referred to, may legally be sustained.

While the arguments of counsel upon this question take a wide range, we find it unnecessary to notice all of them in detail, although each has received careful consideration. In essence, plaintiff's argment is this: The right to

occupy low-rent housing units is in the nature of a bounty which the state is not required to extend to those of its citizens who are disloyal or are engaged in activities designed to destroy our form of government by force or violence or other unconstitutional means. It is to be noted however, that, if the facts alleged in defendants' answer be taken as true (as they must for present purposes), the defendants are not being evicted because they are in fact disloyal or engaged directly or indirectly in advocating the overthrow of our government by unconstitutional means, but only because they refuse to sign a certificate that they are not members of certain organizations. Implicit in plaintiff's argument, therefore, is the assertion that failure or refusal of defendants to disavow membership in any of said organizations is in itself proof that they are disloyal or subversive. Upon this premise plaintiff argues that the case here is comparable to those in which it has been held that a public employee may be required, as a condition to his right to retain public employment, to take an oath that he had not advised, advocated, or taught, and is not a member in any organization which teaches or advocates the overthrow of our form of government by force or violence or other unlawful means. (Garner v. Bd. of Public Works of L. A. (1952), 341 U. S. 716, 95 L. ed. 1317.) Without undertaking to so decide, we may concede, for the purposes of this discussion, that if defendants were being evicted because of their refusal to take an oath similar to that involved in the Garner case. they could not successfully challenge the action of the plaintiff. In such circumstances, it might reasonably be inferred that a refusal to take such oath constitutes an admission that they in fact advocated the overthrow of our form of government by unlawful means.

As indicated, however, this is not the situation here—rather the question is whether they may be evicted from public housing premises for their failure or refusal to sign a statement that they are not members of any one of a large number of organizations designated by the Attorney General "as within Executive Order 10450" (18 F. R. 2489, 5 U. S. C. A., sec. 631, note), namely: "Totalitarian, Fascist, Communist or subversive" or which advocates or approves "the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or which seeks to alter the form of government of the United States by unconstitutional means."[1]

Fully mindful of the grave threats which the activities of subversives present to our form of government, and while reluctant to strike down any governmental action designed to frustrate their purpose and the accomplishment of their objectives, we are not at liberty to disregard settled rules of law and the limitations inherent in our constitutional form of government, observance of which in our view compels a reversal of the judgment for the following reasons:

1. If it be assumed, as plaintiff's argument suggests, that subversives may constitutionally be denied the right to enjoy public housing facilities, neither the Executive

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[1]Originally the Attorney General in compiling his list had broken it down into six categories, only one of which was entitled "subversive" and only about thirteen organizations had been so designated up to April 29, 1953, after which the current list was promulgated, in which the organizations named therein are not separately classified but they are described only as being organizations "within Executive Order No. 10450." (See Peters v. N. Y. City Housing Auth. (1954), 121 N. E. 2d 529, 532-533.)

Order nor the Hatch Act (3 U. S. C. A., sec. 118j(1))[2] undertakes to proscribe membership in *all* of the organizations designated by the Attorney General. Nor does the Executive Order declare that proof of membership in any of the organizations designated by the Attorney General shall in and of itself operate to establish that one is a subversive. (See Kutcher v. Gray (C. C. A. D. C. 1952), 199 F. 2d 783, 787-788.) In speaking of the effect of the Executive Order as related to a government employee's membership in an organization included in the Attorney General's list, Mr. Justice Reed, upon behalf of the minority in Anti-Fascist Refugee Com. v. McGrath (1951), 341 U. S. 123, 95 L. ed. 817, points out that the "listing" of an organization has no "finality in determining the loyalty of members" thereof (95 L. ed. 871), and further that "The employee's association with a listed organization does not, under the Order, establish, even *prima facie,* reasonable grounds for belief in the employee's disloyalty." (95 L. ed. 864.) See also discussion in Peters v. N. Y. City Housing Authority (1955), 128 N. Y. S. 2d 224, 240-241, reversed upon other grounds, 121 N. E. 2d 529. If this be true in the delicate field of public employment, it is doubly so where a state agency undertakes to discriminate against members of any such organization solely upon the basis of membership therein. As said in Peters v. N. Y. Housing Authority, *supra* (p. 236): "Obviously, the government is under no duty to provide bounties in the form of low rent housing ac-

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[2]"It shall be unlawful for any person employed in any capacity by any agency of the Federal Government, where compensation, or any part thereof, is paid from funds authorized or appropriated by any Act of Congress, to have membership in any political party or organization which advocates the overthrow of our constitutional form of government in the United States."

commodations for its citizens. If it elects to do so, however, it cannot arbitrarily prevent any of its citizens from enjoying these statutory created privileges. Nor can it make the privilege of their continuances dependent upon conditions that would deprive any of its citizens of their constitutional rights. A government is without power to impose an unconstitutional requirement as a condition for granting a privilege, even though the privilege may have been the use of government property. Frost v. Railroad Commission of California, 271 U. S. 583, 46 S. Ct. 605, 70 L. Ed. 1101." "(N)or shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens." (Cal. Const., Art. I, sec. 21.)

2. We are also in agreement with the conclusion expressed by the Supreme Court of Illinois in Chicago Housing Authority v. Blackman, *supra*, 122 N. E. 2d 522, that the plaintiff Housing Authority is without authority to exact the signing of the non-membership certificate as a condition to the right to occupy its premises. The court there says (p. 526): "The purpose of the Illinois Housing Authorities Act is to eradicate slums and provide housing for persons of low-income class. (See Krause v. Peoria Housing Authority, 370 Ill. 356, 373.) It is evident that the exclusion of otherwise qualified persons solely because of membership in organizations designated as subversive by the Attorney General has no tendency whatever to further such purpose. In Krause v. Peoria Housing Authority, we held that arbitrary discretion in the choice of tenants was not conferred on the local housing authority, since reasonable standards to guide the exercise of discretion are provided by section 25 of the act. A construction of section 27 which would enable the

housing authority to prescribe conditions of eligibility having no rational connection with the purpose of the act would raise serious constitutional questions. It is a well-established rule that statutes will be construed, if possible, so as to avoid invalidity. We conclude that appellee exceeded its statutory authority in requiring appellant Clark to execute the certificate of non-membership in subversive organizations.

It may be noted that section 25 of the Illinois Act, except for the requirement of the statutory oath (there held invalid) is substantially identical with our Health and Safety Code sections 34322 and 34323, and section 27 is substantially the same as Health and Safety Code section 34327.

In addition to what was said by the Supreme Court of Illinois, we fail to find in the act, pursuant to which the plaintiff Housing Authority was created, anything to suggest that it is authorized to use the powers conferred upon it to punish subversives or discourage persons from entertaining subversive ideas by denying to such the right of occupying its facilities. Nor is it apparent that the laudable purpose of combating the efforts of subversives is advanced by compelling them to live in slums or sub-standard housing accommodations.

As indicated at the inception of this discussion, we have necessarily been compelled to assume the truth of the facts alleged in the defendants' answer for the purpose of determining whether it stated a defense to the action. This because the facts set forth in the affidavits filed upon behalf of the defendants in opposition to plaintiff's motion for summary judgment are in accordance with and support the allegations in the answer. It may, of course,

well be that upon the trial the evidence will disclose that the failure of defendants to sign the nonmembership certificate was not the sole reason for their eviction, in which event the defendants will have failed to establish their pleaded defense.

The judgment is reversed and the cause remanded for trial upon the issues tendered by the pleadings.

Dated Jan. 19, 1955.

PATROSSO, *Judge.*

We concur.

SHAW, *Presiding Judge.*

BISHOP, *Judge.*